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IN THE ESTATE OF TUNKU ABDUL RAHMAN PUTRA IBNI ALMARHUM SULTAN ABDUL HAMID

HIGH COURT MALAYA, SHAH ALAM
LOW HOP BING J
[PETITION NO: 31-7-1991]
b 27 AUGUST 1998

CIVIL PROCEDURE: *Jurisdiction - High Court - Muslims - Probate and administration of estates - Validity of marriage involving Muslims and legitimacy of issue - Whether High Court has jurisdiction - Federal* c *Constitution - Courts of Judicature Act 1964 - Probate and Administration Act 1959*

FAMILY LAW: *Marriage - One party Muslim - Legitimacy of issue - Whether High Court has jurisdiction - Whether a matter for the Syariah Court*

d This petition relates to the administration of the estate of Malaysia's first Prime Minister, Tunku Abdul Rahman Putra ('the deceased'), who was a Muslim. The administrators of the deceased's estate filed a summons in chambers praying for orders that: (i) the letters of administration dated 4 September 1991 be revoked pursuant to O. 71 r. 36(1) of the Rules of the High Court 1980 e ('the RHC'); (ii) the petition dated 16 January 1991 be amended; and (iii) the administrators be given leave to obtain new letters of administration based on the amended petition.

The question for determination was whether the High Court had jurisdiction to hear and determine the disputes which: (i) arise out of the administration f of the estate of a Muslim; and (ii) pertain to the validity of the marriage between the deceased and one Chong Ah Moi ('Chong') and consequently the legitimacy of the issue of that marriage, of which the third petitioner was one. The relevant statutes which fell to be considered were the the Federal Constitution, the Courts of Judicature Act 1964 ('the CJA'), the Probate and g Administration Act 1959 and O. 71 of the RHC.

Held:

[1] Article 121 of the Federal Constitution establishes the jurisdiction of the High Court to the extent conferred by federal law enacted pursuant to the h Ninth Schedule, List 1 of the Federal List. Paragraph 4(e)(i) of the Federal List includes the power of Parliament to legislate in respect of, *inter alia,* matters of probate and administration.

[2] Through the CJA, Parliament has conferred on the High Court jurisdiction i in respect of matters of probate and administration. The dominant position of the CJA in contrast to other Acts of Parliament other than the Federal

Constitution is reflected in s. 4 of the CJA which provides that in the event of an inconsistency or conflict between the CJA and other written laws other than the Federal Constitution, the provisions of the CJA shall prevail.

[3] Parliament has also enacted the Probate and Administration Act 1959 to deal with matters relating to the same, and this Act is of general application to both Muslims and non-Muslims alike, as opposed to other statutes which have clauses limiting their application to Muslims.

[4] Therefore, the High Court is empowered to deal with matters of probate and administration involving the estates of Muslims. Furthermore, the Syariah Appeal Board of the Federal Territory had held that it was the High Court which should exercise jurisdiction over matters of probate and administration of Muslim estates.

[5] The High Court has jurisdiction over any matter that does not fall within the jurisdiction of the Syariah Court but has no jurisdiction over matters that fall within the Syariah Court's jurisdiction. Whilst it is for the respective state legislatures to legislate on the jurisdiction of the Syariah Court in that state, in the event that the state legislature does not do so, there is no impediment to the High Court's exercise of jurisdiction. Jurisdiction is conferred on the Syariah Court by express provision and not by implication.

[6] While the High Court has jurisdiction over probate and administration matters involving Muslims, this matter also involves the question of the validity of a marriage and legitimacy of children involving Muslims, which fall within the Syariah Court's jurisdiction.

[7] The most practical approach for the court to take therefore, was to order a stay of the proceedings and refer the issues relating to legitimacy and validity of marriage to the Syariah Court for determination.

[Orders accordingly with costs to be in the cause.]

Cases referred to:

Barkath Ali Abu Backer v. Anwar Kabir Abu Backer & Ors [1997] 2 CLJ Supp 295 ***(foll)***

Jumaaton dan Raja Delila v. Raja Hizaruddin (unreported) ***(refd)***

Lim Chan Seng v. Pengarah Jabatan Agama Islam Pulau Pinang & 1 Kes Yang Lain [1996] 2 CLJ 231 ***(foll)***

Mohamed Habibullah Mahmood v. Faridah Dato Talib [1993] 1 CLJ 264 ***(foll)***

Mohd Hakim Lee v. Majlis Agama Islam Wilayah Persekutuan [1997] 4 CLJ Supp 419 ***(dist)***

Ng Wan Chan v. Majlis Agama Islam Wilayah Persekutuan (No 2) [1991] 3 MLJ 487 ***(cit)***

Shaik Zolkaffily Shaik Natar & Ors v. Majlis Agama Islam Pulau Pinang dan Seberang Perai [1997] 4 CLJ 70 ***(foll)***

Legislation referred to:

Administration of Islamic Law (Selangor) Enactment 1989, s. 42(2)(b)
Administration of Islamic Religious Affairs Enactment of the State of Penang 1993, s. 48(2)(b)
Adoption Act 1952, s. 31
Courts of Judicature Act 1964, ss. 4, 24(f)
Distribution Act 1958, s. 2
Federal Constitution, art. 74(2), 121
Probate and Administration Act 1959, ss. 52, 59
Rules of the High Court 1980, O. 20 rr. 5, 7, O. 71 r. 36(1), O. 72
Wills Act 1959, s. 2(2)

Other source referred to:

Probate and Administration in Singapore and Malaysia: Law and Practice, G Raman, p 5

For the 1st & 2nd petitioners - Rosli Dahlan (Chan Kheng Hoe with him); M/s Allen & Gledhill
For the 3rd petitioner - Mubashir Mansor (Anisah Low with him); M/s Skrine & Co

Reported by Anne Khoo

JUDGMENT

Low Hop Bing J:

Issue For Determination

The issue which arises for determination in relation to encl. (52) is whether, upon a proper construction of the relevant provisions of the Federal Constitution, the Courts of Judicature Act 1964, the Probate and Administration Act 1959 and O. 71 of the Rules of the High Court 1980, this court has the jurisdiction to hear and determine a dispute arising out of the administration of the estate of a Muslim and a related dispute pertaining to the validity of marriage contracted between one Chong Ah Moi alias Chong Mee Nee and the deceased ie, the late Tunku Abdul Rahman ibni Almarhum Sultan Abdul Hamid.

Submission For The Joint Administrators

Learned counsel for the joint administrators submitted that the proceedings herein are under the Probate and Administration Act 1959 and O. 71 of the Rules of the High Court and so this court has the jurisdiction to hear and determine the dispute as described above.

Submission For The 3rd Petitioner

Learned counsel for the 3rd petitioner contends that although the prayers in encl. (52) *prima facie* relates to the administration of the estate of a Muslim, there is a related dispute in relation to the validity of the marriage between one Chong Ah Moi alias Chong Mee Nee and the late Tunku Abdul Rahman ibni Almarhum Sultan Abdul Hamid.

Decision Of The Court

1. Prayers Sought In Encl (52)

The summons in chambers dated 5 August 1997 (encl. (52)) filed by the joint administrators is asking for the following orders:

(a) that the letters of administration to administer the estate of the late Tunku Abdul Rahman ibni Almarhum Sultan Abdul Hamid dated 4 September 1991 be revoked pursuant to O. 71 r. 36(1);

(b) That the petition dated 16 January 1991 be amended pursuant to O. 20 r. 5 read together with r. 7, as the amended petition; and

(c) the applicants named herein be given leave to obtain new letters of administration based on the amended petition.

Prima facie, these prayers come properly within the broad ambit of probate and administration of estates.

The above prayers in encl. (52) also give rise to a related dispute in relation to the validity of the marriage contracted between one Chong Ah Moi alias Chong Mee Mee and the late Tunku Abdul Rahman Ibni Almarhum Sultan Abdul Hamid and consequently the legitimacy of one of the products of the said marriage ie, 3rd petitioner.

2. Jurisdiction Of High Court And Jurisdiction Of Syariah Court

Article 121 of the Federal Constitution establishes the jurisdiction of our High Court to the extent as may be conferred by or under Federal law enacted pursuant to the Ninth Schedule, List I – Federal List. Paragraph 4(e)(i) of the said Federal List includes the power of Parliament to legislate for the

Federation in respect of, *inter alia*, matters of "probate and administration". There are, in fact, express provisions which have been enacted by Parliament, thereby conferring upon the High Court jurisdiction in respect of matters of "probate and administration" (See s. 24(f) Courts of Judicature Act 1964). The predominant position of the provisions in the Courts of Judicature Act 1964. *vis-a-vis* other ordinary Acts of Parliament or written law, other than the Federal Constitution, is reflected in s. 4 of the Courts of Judicature Act 1964 which provides that in the event of inconsistency or conflict between the Courts of Judicature Act 1964 and any other written law other than the Federal Constitution, the Courts of Judicature Act 1964 shall prevail. Hence, the Courts of Judicature Act 1964 shall take precedence over every other statute or written law save and except the Federal Constitution.

Parliament has also, in her wisdom, enacted the Probate and Administration Act 1959 to deal with matters relating to probate and administration. This Act is an Act of general application to both Muslims and non-Muslims alike, as opposed to other statutes which have a clause limiting its application to Muslims, eg, see s. 2(2) Wills Act 1959; s. 2 Distribution Act 1958: s. 31 Adoption Act 1952. See also G. Raman, *Probate and Administration in Singapore and Malaysia: Law and Practice (Singapore: Malayan Law Journal Pte Ltd,* 1991) at p. 5.

Rules of procedure have also been enacted in order to enable the High Court to deal with matters of "probate and administration" eg, O. 71 and O. 72, Rules of the High Court 1980, and specifically O. 71 r. 36(1) thereof.

In my judgment, our High Court is empowered to deal with matters of "probate and administration" involving estates of Muslims. Jurisdiction over matters of "probate and administration" is also exercised by our High Court in respect of eg:

(1) Re-sealing of grants from abroad (even of Muslims) must be by the High Court: Section 52 Probate and Administration Act 1959;

(2) For grant issued locally and re-sealed abroad, notice will be given to the High Court which also bears the responsibility of notifying the court resealing the grant should there be any alteration or revocation of the same: Section 59 Probate and Administration Act 1959.

In any event, the Syariah Appeal Board of the Federal Territory Syariah Court has recently (on 8 July 1998) held that it is the High Court which should exercise jurisdiction over matters or "probate and administration" of Muslim estates: *Jumaaton dan Raja Delila v. Raja Hizaruddin* (unreported).

The action before this court flows from a petition for Letters of Administration and is an application for an order to revoke the grant, amend the petition and re-issue a fresh grant of letters of administration. Since encl. (52) clearly concerns matters of "probate and administration", it is within the jurisdiction of this court. Our High Court has jurisdiction over any matter that does not fall within the jurisdiction of the Syariah Court: *Shaik Zolkaffily bin Shaik Natar & Ors (sued as trustees of the estate of Sheik Eusoff bin Shaik Latiff, deceased) v. Majlis Agama Islam Pulau Pinang dan Seberang Perai* [1997] 4 CLJ 70; [1997] 3 MLJ 281.

Conversely, our High Court has no jurisdiction over any matter that falls within the jurisdiction of the Syariah Court: Article 121(1A) Federal Constitution; *Mohamed Habibullah bin Mahmood v. Faridah bte Dato Talib* [1993] 1 CLJ 264; [1992] 2 MLJ 793 SC.

It is for the respective State Legislatures to legislate on the jurisdiction of the Syariah Court for a particular state: Article 74(2) Federal Constitution; Ninth Schedule, List II – State List, para. 1.

In the event that the State Legislatures does not exercise its powers to so legislate, there is no impediment for the civil High Court to exercise jurisdiction: *Lim Chan Seng v. Pengarah Jabatan Agama Islam Pulau Pinang & 1 Kes Yang Lain* [1996] 2 CLJ 231; *Barkath Ali Abu Backer v. Anwar Kabir Abu Backer & Ors* [1997] 2 CLJ Supp 295.

The civil jurisdiction of the Syariah Court, as set out under various State Enactments, does not include such matters as "probate and administration". (See s. 42(2)(b) Administration of Islamic Law (Selangor) Enactments 1989; Section 48(2)(b) Administration of Islamic Religious Affairs Enactments of the State of Penang 1993). Jurisdiction conferred upon a Syariah Court is by way of an express provision, and not by implication: *Shaik Zolkaffily bin Shaik Natar & Ors (sued as trustees of the estate of Sheik Eusoff bin Shaik Latiff, deceased) v. Majlis Agama Islam Pulau Pinang dan Seberang Perai* [1997] 4 CLJ 70; [1997] 3 MLJ 281; *Ng Wan Chan v. Majlis Agama Islam Wilayah Persekutuan (No. 2)* [1991] 3 MLJ 487; *Barkath Ali Abu Backer v. Anwar Kabir Abu Backer & Ors* [1997] 2 CLJ Supp 295.

Although Abdul Kadir Sulaiman J in *Mohd Hakim Lee v. Majlis Agama Islam Wilayah Persekutuan* [1997] 4 CLJ Supp 419, HC held, *inter alia*, that the Syariah Court has jurisdiction over persons professing the religion of Islam in respect of any matter included in para. 1 of List II – State List, Ninth Schedule to the Federal Constitution, the Syariah Court would, in my view, have no jurisdiction over matters of "probate and administration" affecting a person professing the religion of Islam because the said paragraph does not include "probate and administration", even if the jurisdiction of the Syariah Court is given the widest possible interpretation.

Since jurisdiction over matters of "probate and administration" is not conferred upon the Syariah Court, our civil court ie, the High Court shall exercise its jurisdiction: *Shaik Zolkaffily bin Shaik Natar & Ors (sued as trustees of the estate of Sheik Eusoff bin Shaik Latiff, deceased) v. Majlis Agama Islam Pulau Pinang dan Seberang Perai* [1997] 4 CLJ70; [1997] 3 MLJ 281. However, as I have stated above, the prayers sought in encl. (52) are also related to the validity of a marriage and the legitimacy of children, involving Muslims. These two disputed areas are within the jurisdiction of the Syariah Court. I therefore have to consider the most practical approach and solution to the hearing and determination of encl. (52). In this connection, respective learned counsel for the parties in dispute *viz*, the joint administrators and the 3rd petitioner have apparently achieved a consensus ie, to stay the hearing and determination of encl. (52) and refer the issues of the validity of marriage and legitimacy of children to the Syariah Court.

Conclusion

On the foregoing grounds, I hold that this court has the jurisdiction to hear and determine the matter relating to probate and administration in encl. (52). Further, by reason of the apparent consensus of the respective learned counsel for the parties, I hereby order a stay of these proceedings and direct all parties herein to refer to the Syariah Court for a final and conclusive determination in relation to the issues relating to the validity of marriage and the legitimacy of children. Costs in the cause.